

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #5	CCRB Case #: 201807936	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> Discourt. <input type="checkbox"/> O.L.	<input type="checkbox"/> U.S. <input type="checkbox"/> Injury
Incident Date(s) Sun, 09/16/2018 10:21 PM, Mon, 09/17/2018 1:00 AM	Location of Incident: [REDACTED]		Precinct: 115	18 Mo. SOL 03/16/2020	EO SOL 3/16/2020
Date/Time CV Reported Mon, 09/17/2018 2:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/25/2018 11:13 AM		

Complainant/Victim	Type	Home Address
1. [REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]	[REDACTED]
4. [REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
1. [REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]
4. [REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4. POM Luis Guevara	06435	958661	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5. [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
A . POM Luis Guevara	[REDACTED]	[REDACTED]
B . POM Luis Guevara	[REDACTED]	B . Unsubstantiated
C . [REDACTED]	[REDACTED]	[REDACTED]
D . [REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
E . [REDACTED]	[REDACTED]	[REDACTED]
F . [REDACTED]	[REDACTED]	[REDACTED]
G . [REDACTED]	[REDACTED]	[REDACTED]
H . [REDACTED]	[REDACTED]	[REDACTED]
I . [REDACTED]	[REDACTED]	[REDACTED]
J . [REDACTED]	[REDACTED]	[REDACTED]
K . [REDACTED]	[REDACTED]	[REDACTED]
L . [REDACTED]	[REDACTED]	[REDACTED]
M . POM Luis Guevara	Other: On September 16, 2018, at [REDACTED] Street in Queens, Police Officer Luis Guevara improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	M . Other Misconduct
N . [REDACTED]	[REDACTED]	[REDACTED]
O . [REDACTED]	[REDACTED]	[REDACTED]

Case Summary

On September 17, 2018, [REDACTED] filed this complaint with IAB by phone, generating original log number 2018-36407. The CCRB received the complaint on September 25, 2018.

On September 16, 2018, at approximately 10:21 p.m., Police Officer Luis Guevara and other officers from the 115th Precinct responded to a landlord-tenant dispute at [REDACTED] Street in Queens. Earlier that evening, the leaseholder of Apt. 2F, [REDACTED] changed the locks of the building and apartment and removed the belongings of her sub-tenant, [REDACTED]. After officers arrested Ms. [REDACTED] and determined that they could not locate keys to the new locks, PO Guevara called [REDACTED] whom he had identified as the building owner. PO Guevara told Mr. [REDACTED] that he would be arrested for illegal eviction if he did not give Ms. [REDACTED] access to her apartment, and allegedly told Mr. [REDACTED] that the building door would be broken down if Mr. [REDACTED] did not open it (**Allegation A: Abuse of Authority, exonerated; Allegation B: Abuse of Authority, unsubstantiated**).

On September 17, 2019, at approximately 1 a.m., Mr. [REDACTED] wife, [REDACTED] and their daughter, [REDACTED] arrived at [REDACTED] Street, where they met officers including Police Officers [REDACTED] and [REDACTED] all from the 115th Precinct. PO [REDACTED] and PO [REDACTED] told Ms. [REDACTED] that she would be arrested for illegal eviction if she did not grant Ms. [REDACTED] access to Apt. 2F (**Allegations C-D: Abuse of Authority, exonerated**). PO [REDACTED] allegedly shoved Ms. [REDACTED] (**Allegation E: Force, unsubstantiated**). PO [REDACTED] and PO [REDACTED] entered Apt. 2F (**Allegations F-G: Abuse of Authority, substantiated**). PO [REDACTED] threatened to arrest, and then shoved, [REDACTED] Ms. [REDACTED] mother (**Allegation H: Abuse of Authority, substantiated; Allegation I: Force, substantiated**). PO [REDACTED] closed a door inside the apartment, which allegedly damaged the door (**Allegation J: Abuse of Authority, unsubstantiated**). PO [REDACTED] allegedly shoved Ms. [REDACTED] (**Allegation K: Force, unsubstantiated**). PO [REDACTED] entered the building's basement (**Allegation L: Abuse of Authority, substantiated**).

PO Guevara, PO [REDACTED] and PO [REDACTED] failed to activate their BWCs properly (**Allegations M-O: other misconduct**).

The investigation obtained BWC footage of both incidents, and cellphone footage and audio from the second incident (**Board Review 01-08**).

This case was reassigned from Inv. Mancini to Inv. Phillips on October 30, 2018.

Findings and Recommendations

Allegation (A) Abuse of Authority: On September 16, 2018, over the phone, Police Officer Luis Guevara threatened to arrest [REDACTED]

Allegation (B) Abuse of Authority: On September 16, 2018, over the phone, Police Officer Luis Guevara threatened to damage [REDACTED] property.

It is undisputed that Ms. [REDACTED] and Ms. [REDACTED] told PO Guevara that Ms. [REDACTED] had resided in the apartment for several months before the date of the incident. It is also undisputed that Mr. [REDACTED] was an owner of the building. It is also undisputed that PO Guevara called Mr. [REDACTED] and told him that he would be arrested if he did not grant entry to Ms. [REDACTED]

Mr. [REDACTED] testified (**Board Review 09**) that several minutes after the call in which PO Guevara threatened him with arrest, PO Guevara called him again and threatened to force open the door if he did not come to the scene to open the door.

PO Guevara (**Board Review 12**) denied that he told Mr. [REDACTED] that officers would force open the building door if Mr. [REDACTED] did not open it.

PO Guevara did not activate his BWC during the incident. BWC footage from other officers on scene captured a brief snippet of PO Guevara's telephone call to Mr. [REDACTED] but no BWC captured the portion of the call in which PO Guevara threatened Mr. [REDACTED] with arrest and allegedly threatened to make forced entry into the building.

New York City Administrative Code §26-521 (**Board Review 13**) states that, when an occupant of a dwelling unit has been unlawfully evicted, “[I]t shall be unlawful for an owner of a dwelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a dwelling unit.” Patrol Guide Procedure 214-12 and NYPD Legal Bureau Bulletin Vol. 49 No. 3 (Aug. 2019) confirm that a person is an occupant of a dwelling if she has lawfully occupied it for at least 30 days, and that officers may threaten to arrest a landlord who refuses to return access to the dispossessed occupant (**Board Review 40-41**).

The investigation found that PO Guevara had sufficient reason to believe that Ms. [REDACTED] was an occupant of the apartment. As Mr. [REDACTED] owned the building, the investigation determined that PO Guevara was justified in telling him that he could be arrested if he did not restore Ms. [REDACTED] access to her apartment. It is therefore recommended that **Allegation A** be closed as **exonerated**. Given the conflicting statements and the absence of additional evidence, the investigation could not establish by a preponderance of the evidence whether PO Guevara threatened to force open the building door. It is therefore recommended that **Allegation B** be closed as **unsubstantiated**.

Allegation (C) Abuse of Authority: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] threatened to arrest [REDACTED]

Allegation (D) Abuse of Authority: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] threatened to arrest [REDACTED]

It is undisputed that Ms. [REDACTED] was an owner of the property at the time of the incident. It is undisputed that Ms. [REDACTED] told the officers that she could not unlock the doors to the building and apartment to grant Ms. [REDACTED] entry, and that PO [REDACTED] and PO [REDACTED] both told her that she would be subject to arrest if she refused to do so.

An audio recording provided by Ms. [REDACTED] captured a portion of her conversation with the officers (**Board Review 07**). The audio shows that Ms. [REDACTED] told the officers that she could not allow Ms. [REDACTED] to enter the apartment because she did not know Ms. [REDACTED]. PO [REDACTED] repeatedly stated that Ms. [REDACTED] would be arrested if Ms. [REDACTED] did not grant Ms. [REDACTED] access to the apartment. PO [REDACTED] stated a single time that Ms. [REDACTED] would be arrested if Ms. [REDACTED] did not grant Ms. [REDACTED] access to the apartment.

Ms. [REDACTED] testified that she told the officers that she could not unlock the doors because she did not possess keys to the new locks. Ms. [REDACTED] similarly testified that Ms. [REDACTED] told the officers that she could not comply because she did not possess keys to the new locks. Ms. [REDACTED] added that Ms. [REDACTED]

[REDACTED] also told the officers that she did not wish to grant Ms. [REDACTED] access because she did not know Ms. [REDACTED] to be a tenant.

PO [REDACTED] and PO [REDACTED] both testified (**Board Review 14-15**) that Ms. [REDACTED] said she did not want to allow Ms. [REDACTED] to access the building. PO [REDACTED] recounted that he knocked on the window of the first floor apartment, and that the tenant, [REDACTED] confirmed to PO [REDACTED] that Ms. [REDACTED] had resided in the building for more than 30 days.

The investigation credited PO [REDACTED] account of his conversation with Ms. [REDACTED] and specifically that she told him that Ms. [REDACTED] had resided in the second floor apartment for more than 30 days.

New York City Administrative Code §26-521 (Board Review 13) states that, when an occupant of a dwelling unit has been unlawfully evicted, “[I]t shall be unlawful for an owner of a dwelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a dwelling unit.” Patrol Guide Procedure 214-12 and NYPD Legal Bureau Bulletin Vol. 49 No. 3 (Aug. 2019) confirm that a person is an occupant of a dwelling if she has lawfully occupied it for at least 30 days, and that officers may threaten to arrest a landlord who refuses to return access to the dispossessed occupant (**Board Review 40-41**).

The investigation found that the officers had sufficient reason to believe that Ms. [REDACTED] was an occupant of the apartment. As a result, the investigation determined that PO [REDACTED] and PO [REDACTED] were justified in telling Ms. [REDACTED] that she would be arrested if she did not open the apartment for Ms. [REDACTED]. It is therefore recommended that **Allegations C and D** be closed as **exonerated**.

Allegation (E) Force: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] used physical force against [REDACTED]

Ms. [REDACTED] testified that she, Ms. [REDACTED] and two relatives who had arrived on scene went to the second floor common hallway to open the door of Apt. 2F, while the officers remained outside the building. Ms. [REDACTED] then went downstairs to the first floor hallway to notify the officers that the apartment door was open. PO [REDACTED] then shoved Ms. [REDACTED] to the side in the hallway before going upstairs. Ms. [REDACTED] did not indicate that there was anyone present for this force besides herself, PO [REDACTED] and PO [REDACTED].

Ms. [REDACTED] testified (**Board Review 17**) that Ms. [REDACTED] later told her that PO [REDACTED] had pushed her, but Ms. [REDACTED] did not witness this herself.

PO [REDACTED] denied shoving Ms. [REDACTED] and denied that he was in the first floor hallway when a civilian opened the door to Apt. 2F. He recounted that he was standing in the common hallway on the second floor at that time. PO [REDACTED] also testified that he was standing in the common hallway on the second floor. He did not recall seeing PO [REDACTED] shove Ms. [REDACTED]. PO [REDACTED] testified that he left the scene before this portion of the incident and denied seeing PO [REDACTED] shove Ms. [REDACTED].

This portion of the incident was not captured on any officer's BWC.

Given the conflicting statements, and absent additional evidence, the investigation could not establish by a preponderance of the evidence whether PO [REDACTED] shoved Ms. [REDACTED]. It is therefore recommended that **Allegation E** be closed as **unsubstantiated**.

Allegation (F) Abuse of Authority: On September 17, 2018, Police Officer [REDACTED] entered [REDACTED] Street, Apt. 2F in Queens.

Allegation (G) Abuse of Authority: On September 17, 2018, Police Officer [REDACTED] entered [REDACTED] Street, Apt. 2F in Queens.

It is undisputed that PO [REDACTED] and PO [REDACTED] entered the apartment. It is also undisputed that Ms. [REDACTED] [REDACTED] an occupant of the apartment, told the officers that they could not enter the apartment.

PO [REDACTED] testified that he informed Ms. [REDACTED] that he would help her reenter her apartment and that Ms. [REDACTED] stated that she appreciated this. PO [REDACTED] then knocked on the second floor apartment door for approximately 30 to 45 minutes. Ms. [REDACTED] opened the door, but said that PO [REDACTED] could not enter the apartment. PO [REDACTED] immediately stepped into the apartment. As will be described in greater detail in the section regarding Allegations H-I, PO [REDACTED] recounted that Ms. [REDACTED] yelled at him after he entered the apartment, and the investigation determined that he physically forced her to go back into her bedroom.

PO [REDACTED] similarly recounted that he entered the apartment in order to escort Ms. [REDACTED] to her room. He could not recall if anyone inside the apartment objected to the officers entering the apartment.

Absent an emergency, it is NYPD policy that officers are not permitted to physically assist an illegally evicted occupant in gaining entry to her dwelling unit. NYPD Legal Bureau Bulletin Vol. 49 No. 3 (Aug. 2019) (Board Review 41). If any co-tenant of a residence is present and objects to officers entering that residence, then officers are not permitted to enter, regardless of whether another co-tenant consents to the entry. People v. Watson, 101 A.D.3d 913 (2nd Dept. 2012) (Board Review 42); Georgia v. Randolph, 547 U.S. 103 (2006) (Board Review 43).

PO [REDACTED] testimony made it clear that Ms. [REDACTED] [REDACTED] objected to the officers entering the apartment. Although Ms. [REDACTED] asked the officers to assist her in regaining entry to her residence, the officers no longer possessed consent to enter the apartment once Ms. [REDACTED] [REDACTED] objected to their doing so. As a result, the investigation determined that the officers entered the apartment without sufficient justification. Therefore, it is recommended that **Allegations F and G** be closed as **substantiated**.

Allegation (H) Abuse of Authority: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] threatened to arrest [REDACTED] [REDACTED]

Allegation (I) Force: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] used physical force against [REDACTED] [REDACTED]

It is undisputed that PO [REDACTED] threatened to arrest Ms. [REDACTED] [REDACTED]

Ms. [REDACTED] (Board Review 18) testified that, when she heard the apartment door open, she walked into the living room and saw PO [REDACTED] standing in the doorway. PO [REDACTED] ordered Ms. [REDACTED] [REDACTED] to reenter her bedroom, and Ms. [REDACTED] responded by asking PO [REDACTED] if he possessed a court order. Ms. [REDACTED] did not testify that she made any other statements to PO [REDACTED] and she did not indicate that she raised her voice. Ms. [REDACTED] did not testify that she physically obstructed PO [REDACTED] or made contact with him. PO [REDACTED] grasped Ms. [REDACTED] [REDACTED] arm and escorted her to her bedroom door before shoving her through the doorway. Ms. [REDACTED] reported that she sustained bruising to her arm from PO [REDACTED] grabbing her, and she provided a photograph of this bruising (Board Review 35). Ms. [REDACTED] had to grab onto nearby furniture to keep herself from falling. Ms. [REDACTED] then asked PO [REDACTED] why he was doing this, and PO [REDACTED] replied in Spanish, "Be quiet or I will handcuff you and take you away handcuffed." PO [REDACTED] closed the bedroom door, and Ms. [REDACTED] [REDACTED] did not have any further interaction with the officers.

Ms. [REDACTED] and Ms. [REDACTED] both testified that, after PO [REDACTED] entered the apartment, Ms. [REDACTED] told PO [REDACTED] to leave because he did not possess the necessary paperwork to enter the apartment. Ms. [REDACTED] also recounted that Ms. [REDACTED] told PO [REDACTED] that there were children present. Ms. [REDACTED] and Ms. [REDACTED] did not testify that Ms. [REDACTED] made any other statements, raised her voice, or physically obstructed PO [REDACTED]. PO [REDACTED] responded by grasping Ms. [REDACTED] arms and shoving her into her bedroom. Ms. [REDACTED] also recounted that she told PO [REDACTED] "Don't push the lady," in reference to PO [REDACTED] having pushed Ms. [REDACTED].

PO [REDACTED] testified that, after the apartment door was opened, Ms. [REDACTED] told him that he could not enter the apartment. PO [REDACTED] replied, "Ma'am, we're coming in," and he stepped inside. PO [REDACTED] did not testify that Ms. [REDACTED] physically obstructed him from entering the apartment. After PO [REDACTED] entered the apartment, Ms. [REDACTED] stood in front of him and yelled. PO [REDACTED] did not testify that Ms. [REDACTED] made any physical contact with him, and he did not testify that she made any verbal threats. PO [REDACTED] assessed that Ms. [REDACTED] yelling would impede the officers from granting Ms. [REDACTED] access to the apartment. PO [REDACTED] ordered Ms. [REDACTED] to reenter her bedroom and informed Ms. [REDACTED] that she could be arrested for obstructing governmental administration. Ms. [REDACTED] reentered her bedroom. PO [REDACTED] denied that he shoved Ms. [REDACTED] and further denied making any physical contact with her. PO [REDACTED] recounted that the door to Ms. [REDACTED] bedroom was closed after she went back into her bedroom, but PO [REDACTED] could not recall if he closed the door himself.

PO [REDACTED] recalled that individuals inside the apartment were unhappy about the officers' presence, but he could not recall if anyone inside the apartment objected to the officers' entry. He reported that no other issues arose in escorting Ms. [REDACTED] to her bedroom. PO [REDACTED] did not recall seeing PO [REDACTED] shove, threaten with arrest, or otherwise interact with Ms. [REDACTED].

The investigation obtained BWC and cellphone footage showing the conclusion of PO [REDACTED] interaction with Ms. [REDACTED]. The investigation did not obtain footage showing the period in which PO [REDACTED] allegedly shoved and threatened to arrest Ms. [REDACTED]. The cellphone footage, recorded by Ms. [REDACTED] (**Board Review 29**), shows PO [REDACTED] standing briefly in the threshold of Ms. [REDACTED] bedroom door, with Ms. [REDACTED] immediately inside the bedroom, before PO [REDACTED] closes the bedroom door. Both the cellphone footage and PO [REDACTED] BWC footage (**Board Review 30**) show the bedroom door immediately reopening and Ms. [REDACTED] standing immediately inside the bedroom asking for "an order" and stating that there are small children on scene. Ms. [REDACTED] speaks at a normal volume and does not yell at PO [REDACTED]. PO [REDACTED] immediately approaches the bedroom door and closes it a second time. PO [REDACTED] BWC footage also shows that Ms. [REDACTED] called 911 shortly after PO [REDACTED] closed Ms. [REDACTED] bedroom door a second time, and that in recounting the incident to the 911 operator she reported that PO [REDACTED] had pushed Ms. [REDACTED].

The investigation lacked sufficient evidence to determine the exact nature of Ms. [REDACTED] statements to PO [REDACTED] before he threatened her with arrest. Specifically, the investigation could not determine if she initially told PO [REDACTED] not to enter the apartment, if she replied to his order that she return to her bedroom by asking if he had a court order, or if she told him to leave the apartment because he did not have a court order. The investigation also could not determine if she yelled at PO [REDACTED] at any point, though the video footage shows her speaking at a normal volume when he closed her bedroom door a second time. PO [REDACTED] testimony made

it clear that Ms. [REDACTED] did not physically obstruct him from entering the apartment, nor did she make physical contact with him or threaten him.

Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] all consistently testified that PO [REDACTED] physically escorted Ms. [REDACTED] to her bedroom and shoved her inside. PO [REDACTED] in contrast, denied that he made any physical contact with Ms. [REDACTED]. He recounted that Ms. [REDACTED] simply reentered her bedroom after being ordered to do so. The video footage showed that PO [REDACTED] interaction with Ms. [REDACTED] led him to stand briefly in the threshold of her bedroom doorway while facing into her bedroom, after which point he closed her bedroom door. As such, the footage was more consistent with the civilians' accounts of PO [REDACTED] interaction with Ms. [REDACTED] and was indicative of his having physically escorted her into her bedroom. As a result, the investigation credited the civilians' accounts over that of PO [REDACTED] and determined by a preponderance of the evidence that PO [REDACTED] grabbed and shoved Ms. [REDACTED] while escorting her into to her bedroom.

A person is guilty of obstructing governmental administration ("OGA") in the second degree when she prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act. New York State Penal Law §195.05 (**Board Review 32**). The interference [REDACTED] be in part, at least, physical in nature, but criminal responsibility should attach to minimal interference set in motion to frustrate police activity. People v. Dumay, 23 N.Y.3d 518 (2014) (**Board Review 19**). In some instances, courts have found that an individual's behavior constituted OGA, even when the individual did not make physical contact with an officer or when the individual did not place her body in a position to physically prevent an officer from performing an official function. However, in those instances, the individual engaged in behavior which evinced a clear intent to obstruct police activity, such as by disobeying orders to leave a specific area and verbally warning others of imminent police enforcement, by cursing at officers while throwing objects at them, or by repeatedly disobeying orders not to approach a struggle between officers and an arrestee. See In re Davan L., 91 N.Y.2d 88 (1997) (**Board Review 36**); People v. Covington, 18 A.D.3d 65 (1st Dept. 2005) (**Board Review 37**); People v. Tisdale (Julius), 21 Misc. 3d 141(A) (2nd Dept. 2008) (**Board Review 38**); People v. Romeo, 9 A.D.3d 744 (3rd Dept. 2004) (**Board Review 39**).

NYPD Patrol Guide Procedure 221-01 notes that an officer may use reasonable physical force "to ensure the safety of a member of the service or a third person... or when it is reasonable to place a person in custody or to prevent escape from custody" (**Board Review 33**).

As described above, the investigation found that Ms. [REDACTED] did not make physical contact with PO [REDACTED] did not obstruct him from entering the apartment, and did not verbally threaten him. The investigation did not credit PO [REDACTED] assessment that Ms. [REDACTED] impeded his ability to restore Ms. [REDACTED] occupancy merely by standing in her own apartment and yelling at him. As a result, the investigation concluded that PO [REDACTED] was not justified in threatening to arrest Ms. [REDACTED] for obstructing governmental administration. Similarly, a preponderance of the evidence indicated that Ms. [REDACTED] did not present a threat to the safety of the officers or civilians present, and that PO [REDACTED] was not attempting to place her in custody. The investigation thus determined that PO [REDACTED] use of physical force against Ms. [REDACTED] although minor, was not reasonable under the circumstances. It is therefore recommended that **Allegations H and I** be closed as **substantiated**.

Allegation (J) Abuse of Authority: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] damaged [REDACTED] property.

Ms. [REDACTED] testified that, after PO [REDACTED] shoved her into her bedroom, PO [REDACTED] slammed the door closed. The following day, Ms. [REDACTED] observed a crack in the door, which she believed had been caused by PO [REDACTED] action. Ms. [REDACTED] provided a photograph of the damage (**Board Review 20**).

Ms. [REDACTED] and Ms. [REDACTED] both testified that PO [REDACTED] slammed Ms. [REDACTED] bedroom door closed. Neither testified that PO [REDACTED] action damaged the door.

As noted in the analysis of Allegations H and I, above, video footage showed that PO [REDACTED] closed Ms. [REDACTED] bedroom door twice. The footage showed PO [REDACTED] closing the door at a rapid speed.

PO [REDACTED] did not recall whether he slammed the door, and he never became aware that the door sustained any damage. PO [REDACTED] denied that PO [REDACTED] slammed the door.

While the investigation established by a preponderance of the evidence that PO [REDACTED] closed the door of Ms. [REDACTED] bedroom, the investigation could not determine whether PO [REDACTED] action caused the crack that Ms. [REDACTED] reported. Video footage shows that PO [REDACTED] closed the door forcefully, but not with such excessive force or in such a manner that would be beyond the scope of normal usage, and not in a manner that would be expected to cause the damage that Ms. [REDACTED] alleged. It is therefore recommended that **Allegation J** be closed as **unsubstantiated**.

Allegation (K) Force: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] used physical force against [REDACTED]

Ms. [REDACTED] testified that, after PO [REDACTED] entered the apartment, she said to PO [REDACTED] "Don't push the lady," in reference to PO [REDACTED] having pushed Ms. [REDACTED]. PO [REDACTED] responded by approaching Ms. [REDACTED] grasping both of her arms, and attempting to shove her out of the apartment. PO [REDACTED] shoved Ms. [REDACTED] against a wall. While shoving Ms. [REDACTED], PO [REDACTED] stepped on an unhealed burn on Ms. [REDACTED] left foot, which caused her pain.

Ms. [REDACTED] testified that, after PO [REDACTED] entered the apartment, Ms. [REDACTED] said to PO [REDACTED] "Step out, calm down, and then come back in." PO [REDACTED] responded by approaching Ms. [REDACTED] grasping both of her arms, and attempting to shove Ms. [REDACTED] out of the apartment. PO [REDACTED] shoved Ms. [REDACTED] against a wall and stepped on her foot in the process. Ms. [REDACTED] testified that she never saw Ms. [REDACTED] on the scene, and therefore did not see PO [REDACTED] push her in the manner alleged.

Ms. [REDACTED] medical records from Elmhurst Hospital (**Board Review 34**) indicate that Ms. [REDACTED] requested an evaluation because she was pregnant and experiencing abdominal pain stemming from her interaction with PO [REDACTED]. The records do not indicate that the hospital evaluated any injury to Ms. [REDACTED] foot.

PO [REDACTED] denied shoving Ms. [REDACTED] and stated that he did not believe he stepped on her foot. PO [REDACTED] recounted that Ms. [REDACTED] placed both of her hands on his back and told him that he could not enter the apartment shortly after he entered. PO [REDACTED] responded by placing both of his hands on Ms. [REDACTED] arms without grasping or applying pressure. PO [REDACTED] ordered Ms. [REDACTED] to step back and

she complied. PO [REDACTED] prepared a TRI Report (**Board Review 21**) which noted that he unintentionally stepped on Ms. [REDACTED] left foot, prompting her to complain of pain and request a medical evaluation. After reviewing the report at his CCRB interview, PO [REDACTED] testified that the document did not change his memory of the incident and he did not wish to add anything to his statement.

PO [REDACTED] did not recall PO [REDACTED] shoving Ms. [REDACTED] or stepping on her foot.

Neither Ms. [REDACTED] nor PO [REDACTED] testified that they witnessed any physical interaction between PO [REDACTED] and Ms. [REDACTED]. Given the conflicting statements, and absent additional evidence, the investigation could not establish by a preponderance of the evidence if PO [REDACTED] shoved Ms. [REDACTED] in the manner alleged, or if he merely placed his hands on her arms. The investigation was further unable to establish the context in which PO [REDACTED] stepped on Ms. [REDACTED] foot, and could not determine whether he did so intentionally. It is therefore recommended that **Allegation K** be closed as **unsubstantiated**.

Allegation (L) Abuse of Authority: On September 17, 2018 Police Officer [REDACTED] entered the basement of [REDACTED] Street in Queens.

It is undisputed that PO [REDACTED] entered the basement of the building without possessing a warrant to do so.

Video footage from PO [REDACTED] BWC (**Board Review 22**) shows that Ms. [REDACTED] and Ms. [REDACTED] walked along the exterior of the building to a locked door leading to the basement area, followed by PO [REDACTED]. Ms. [REDACTED] asked PO [REDACTED] "Do you have to follow me?" and PO [REDACTED] replied, "Ma'am, you're the suspect in a criminal complaint." Ms. [REDACTED] unlocked the basement door and stepped inside, but did not hold the door open for PO [REDACTED]. PO [REDACTED] pushed the door open before it closed fully, and followed Ms. [REDACTED] into the basement. Ms. [REDACTED] retrieved the tools within a few seconds, and both she and PO [REDACTED] exited the basement.

Ms. [REDACTED] testified (**Board Review 17**) that only she, her husband, and the building superintendent had access to the basement. Ms. [REDACTED] recounted that PO [REDACTED] told her that he was following her to the basement because she was a "criminal." Ms. [REDACTED] account of this portion of the incident was consistent with that of Ms. [REDACTED].

PO [REDACTED] testified that he accompanied Ms. [REDACTED] to the basement in order to ensure that she was complying with her legal obligation to grant Ms. [REDACTED] access to the apartment. He could not recall whether he entered the basement or waited outside the basement door.

Absent consent, exigent circumstances, or emergency circumstances, an officer may not make a warrantless entry into a given premises in which an individual has a legitimate expectation of privacy. Factors germane to determining whether an individual has such an expectation include whether the individual took precautions to maintain privacy in the premises, and whether the individual possessed the right to exclude others from the premises. People v. Rodriguez, 69 N.Y.2d 159 (1987) (**Board Review 23**).

The evidence indicates that Ms. [REDACTED] had a legitimate expectation of privacy in the building's basement, as the basement could only be accessed by a locked door, and as only the building owners and superintendent had access to the basement. PO [REDACTED] did not claim that Ms. [REDACTED] consented to his entering the basement, and the BWC footage shows that she expressed displeasure that he followed her to the basement and that she did not hold the door open for him after entering. PO [REDACTED] desire to follow Ms.

[REDACTED] into the basement to ensure that she would grant Ms. [REDACTED] access to the apartment was not sufficient justification for his entering the basement without a warrant. The investigation therefore determined that PO [REDACTED] warrantless entry into the basement, however brief, was improper. It is therefore recommended that **Allegation L** be closed as **substantiated**.

Allegation (M) Other Misconduct Noted: On September 16, 2018, at [REDACTED] Street in Queens, Police Officer Luis Guevara improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (N) Other Misconduct Noted: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (O) Other Misconduct Noted: On September 17, 2018, at [REDACTED] Street in Queens, Police Officer [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

PO Guevara did not activate his BWC during this incident. This incident occurred 90 days after PO Guevara was first equipped with a BWC. PO Guevara testified that he did not activate his BWC because he had not initially realized that an arrest would result. PO [REDACTED] did not activate his BWC until late in the incident, shortly after access had been gained to the apartment. This incident occurred 92 days after PO [REDACTED] was first equipped with a BWC. PO [REDACTED] did not activate his BWC during this incident. This incident occurred 91 days after PO [REDACTED] was first equipped with a BWC.

NYPD Patrol Guide Procedure 212-123 (**Board Review 24**) requires that officers activate their body worn cameras prior to engaging in interactions with persons suspected of criminal activity and prior to engaging in or assisting with arrests.

As neither PO Guevara, nor PO [REDACTED] nor PO [REDACTED] immediately activated his body worn camera upon learning that the incident involved an arrest or an interaction with a person suspected of criminal activity, it is recommended that they be cited for **other misconduct** for **Allegations M-O**.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which Ms. [REDACTED] (Board Review 25), Ms. [REDACTED] (Board Review 26), Mr. [REDACTED] (Board Review 27), and Ms. [REDACTED] (Board Review 28) have been party.
- PO Guevara has been a member of the NYPD for four years and this is the first CCRB complaint in which he has been a subject.
- PO [REDACTED] has been a member of the NYPD for 14 years and has been a subject in one additional CCRB complaint and two allegations, neither of which was substantiated. PO [REDACTED] CCRB history does not indicate any apparent pattern pertinent to this investigation.
- PO [REDACTED] has been a member of the NYPD for three years and has been a subject in one additional CCRB complaint and 17 allegations, none of which was substantiated.
 - 201905096 involves allegations of entry of premises, threat of arrest, threat of force, courtesy, and detention pleaded against PO [REDACTED]. To date this investigation is still open.
- PO [REDACTED] has been a member of the NYPD for one year and this is the first CCRB complaint in which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
 - On September 17, 2019, the NYC Office of the Comptroller confirmed that no Notice of Claim had been filed regarding this incident (**Board Review 31**).
 - Searches of the NYPD's arrest database did not yield any unsealed arrests for Ms. [REDACTED] Ms. [REDACTED] [REDACTED] Mr. [REDACTED] or Ms. [REDACTED] therefore, no searches were conducted for criminal convictions.
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Squad No.: _____

Investigator: _____
Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____
Signature _____ Print Title & Name _____ Date _____

Reviewer: _____
Signature _____ Print Title & Name _____ Date _____